

# House Study Bill 120

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
STATE GOVERNMENT BILL BY  
CHAIRPERSON MASCHER)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act requiring the licensing of abstractors within the  
2 department of commerce, establishing fees, penalties, and  
3 judicial remedies, and providing an effective date.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 1862HC 83  
6 jr/rj/5

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1 1 Section 1. NEW SECTION. 545.1 DEFINITIONS.  
1 2 As used in this chapter, unless the context otherwise  
1 3 requires:  
1 4 1. "Board" means the abstractor board of examiners created  
1 5 pursuant to this chapter.  
1 6 2. "Bureau" means the professional licensing and  
1 7 regulation bureau of the banking division of the department of  
1 8 commerce.  
1 9 Sec. 2. NEW SECTION. 545.2 LICENSE REQUIRED.  
1 10 On and after July 1, 2010, a person shall not make,  
1 11 compile, or complete or sell abstracts of title to real estate  
1 12 or execute real property title searches in this state unless  
1 13 the person is supervised or managed on a full-time basis by or  
1 14 employs on a full-time basis an individual licensed under this  
1 15 chapter.  
1 16 Sec. 3. NEW SECTION. 545.3 BOARD OF EXAMINERS.  
1 17 1. An abstractor board of examiners is created within the  
1 18 bureau. The board shall consist of five members appointed by  
1 19 the governor, subject to confirmation by the senate. Three of  
1 20 the members appointed shall be licensed under this chapter,  
1 21 and in compliance with section 545.4, subsection 8, paragraph  
1 22 "a", and two members shall represent the general public.  
1 23 Members of the board shall serve three-year, staggered terms  
1 24 as designated by the governor and appointments to the board  
1 25 are subject to the requirements of sections 69.16, 69.16A,  
1 26 69.16C, and 69.19. Vacancies shall be filled by the governor  
1 27 for the duration of the unexpired term. Members of the board  
1 28 are entitled to receive a per diem as specified in section  
1 29 7E.6 for each day spent in performance of duties as members  
1 30 and shall be reimbursed for all actual and necessary expenses  
1 31 incurred in the performance of duties as members.  
1 32 2. The abstractor board of examiners shall administer the  
1 33 provisions of this chapter in accordance with rules adopted by  
1 34 the board pursuant to chapter 17A.  
1 35 Sec. 4. NEW SECTION. 545.4 LICENSURE, EXAMINATION, AND  
2 1 FEES == SEAL == NAME == MAINTENANCE OF ABSTRACT TITLE PLANT.  
2 2 1. A person which makes, compiles, or completes and sells  
2 3 abstracts of title to real estate or executes real property  
2 4 title searches in this state shall obtain an abstractor  
2 5 license issued in accordance with this chapter.  
2 6 2. A firm, partnership, association, or corporation may be  
2 7 granted a corporate license if at least one member or officer  
2 8 or employee of the firm, partnership, association, or  
2 9 corporation applies for and is granted an abstractor license,  
2 10 and the firm, partnership, association, or corporation  
2 11 maintains errors and omissions insurance in compliance with  
2 12 minimum requirements as established by the board.  
2 13 3. The annual fee for an abstractor license shall be fixed  
2 14 by the board in rule, shall accompany the application for  
2 15 licensure and shall be returned to the applicant if the  
2 16 license is not issued, except as provided in subsection 6. A  
2 17 license issued under this section expires on December 31 of

the year for which the license is issued. In the absence of any condition or reason which might warrant the refusal of the granting of a renewal license, the board shall issue a license each year upon receipt of a written request of the applicant together with the annual fee established by the board.

4. The board may issue an inactive license to a licensee eligible for such inactive license as determined by the board. The fee for an inactive license shall be the same as for an active license.

5. A license shall not be issued to an applicant until the applicant files with the board a bond or a policy of insurance. Such insurance policy shall be a policy of errors and omissions in an amount as determined by the board and shall be issued by a company authorized to transact business in this state.

6. a. A person applying for an initial license under this section may obtain the license by complying with the provisions of this section and by passing an examination conducted by the board. The board shall hold at least two examinations each year, to be held at times and places to be fixed by the board. The board shall give notice of an examination at least thirty days before the time fixed for the commencement of the examination by publication in the Iowa administrative bulletin. The fee for the examination shall be fixed by the board by rule in an amount adequate to cover the cost of the examination and shall be paid to the board at the time application is made for such examination. In the case of a firm, partnership, association, or corporation, the examination need only be taken by those persons designated to sign abstracts or real property searches on behalf of the firm, partnership, association, or corporation. A licensed firm, partnership, association, or corporation shall submit in writing to the board a list of such designated persons as a condition for license renewal, and shall deposit with the board the signatures of all persons authorized to sign abstracts or real property searches on behalf of the licensee.

b. If the applicant does not pass the examination, the board shall deny the application for a license and retain the examination fee.

7. The board shall establish continuing education requirements as a condition for renewal of the license, as provided in section 272C.2.

8. a. A licensee shall own or lease, and maintain and use in the preparation of abstracts of title or the execution of real property searches, an up-to-date abstract title plant including tract indexes for real estate for each county in which abstracts are prepared or real property searches are executed by the licensee. The tract indexes shall contain a reference to all instruments affecting the real estate that are recorded in the office of the county recorder, and shall contain records for at least the last forty years.

b. Paragraph "a" shall not apply to persons possessing a waiver pursuant to section 16.91.

c. Paragraph "a" shall not apply to an individual supervised, managed, or employed on a full-time basis by a licensee under this chapter who is in compliance with this subsection.

9. This section does not apply to a person who, without compensation, prepares abstracts of title or executes real property title searches, for the person's own personal benefit or for the benefit of a member of the person's immediate family, on real estate owned by or intending to be purchased by or for the person or a member of the person's immediate family.

10. This section does not apply to an employee of a bank, credit union, or other financial institution which is abstracting or preparing title searches that are not subsequently sold to any other public or private entity and that are done for the sole benefit of the institution when making a particular junior or subordinate mortgage loan.

11. This section does not apply to a licensed attorney admitted to practice in Iowa acting solely as an incident to the practice of law.

Sec. 5. NEW SECTION. 545.5 UNLAWFUL FOR COUNTY OFFICERS TO PREVENT USE OF RECORDS == CIVIL ENFORCEMENT.

A county officer shall not prevent or prohibit any person who has complied with the provisions of this chapter from a proper use of the records of the office of the county officer. Judicial action to enforce the right of access shall be taken pursuant to section 22.10.

Sec. 6. NEW SECTION. 545.6 SUSPENSION OR REVOCATION OF

4 29 LICENSE == CIVIL PENALTY == NOTICE AND HEARING.  
4 30 The board, after notice and hearing conducted in accordance  
4 31 with chapter 17A, may suspend or revoke a license, or impose a  
4 32 civil penalty of up to one thousand dollars, for a violation  
4 33 of any provision of this chapter or the rules adopted pursuant  
4 34 to this chapter, or upon the conviction of a licensee for  
4 35 malicious destruction of public records, or for fraudulent  
5 1 practices.  
5 2 Sec. 7. NEW SECTION. 545.7 CIVIL ENFORCEMENT.  
5 3 A private party may bring an action against a person who  
5 4 violates a provision of this chapter or the rules adopted  
5 5 pursuant to this chapter to recover, in addition to actual  
5 6 damages, one hundred dollars in statutory damages per each  
5 7 transaction in violation of this chapter or the rules adopted  
5 8 pursuant to this chapter, reasonable attorney fees, and court  
5 9 costs. If the board has commenced action under section 545.6  
5 10 by serving notice, a private party shall not bring a related  
5 11 action based on the facts underlying the pending board action  
5 12 unless specifically authorized by rule of the board.  
5 13 Sec. 8. Section 272C.1, subsection 6, Code 2009, is  
5 14 amended by adding the following new paragraph:  
5 15 NEW PARAGRAPH. af. The abstractor board of examiners,  
5 16 created pursuant to chapter 545.  
5 17 Sec. 9. Section 272C.3, subsection 2, paragraph a, Code  
5 18 2009, is amended to read as follows:  
5 19 a. Revoke a license, or suspend a license either until  
5 20 further order of the board or for a specified period, upon any  
5 21 of the grounds specified in section 105.22, 147.55, 148.6,  
5 22 148B.7, 152.10, 153.34, 154A.24, 169.13, 455B.219, 542.10,  
5 23 542B.21, 543B.29, 544A.13, 544B.15, 545.6, or 602.3203 or  
5 24 chapter 151 or 155, as applicable, or upon any other grounds  
5 25 specifically provided for in this chapter for revocation of  
5 26 the license of a licensee subject to the jurisdiction of that  
5 27 board, or upon failure of the licensee to comply with a  
5 28 decision of the board imposing licensee discipline.  
5 29 Sec. 10. Section 272C.4, subsection 6, Code 2009, is  
5 30 amended to read as follows:  
5 31 6. Define by rule acts or omissions that are grounds for  
5 32 revocation or suspension of a license under section 105.22,  
5 33 147.55, 148.6, 148B.7, 152.10, 153.34, 154A.24, 169.13,  
5 34 455B.219, 542.10, 542B.21, 543B.29, 544A.13, 544B.15, 545.6,  
5 35 or 602.3203 or chapter 151 or 155, as applicable, and to  
6 1 define by rule acts or omissions that constitute negligence,  
6 2 careless acts, or omissions within the meaning of section  
6 3 272C.3, subsection 2, paragraph "b", which licensees are  
6 4 required to report to the board pursuant to section 272C.9,  
6 5 subsection 2.  
6 6 Sec. 11. Section 272C.5, subsection 2, paragraph c, Code  
6 7 2009, is amended to read as follows:  
6 8 c. Shall state whether the procedures are an alternative  
6 9 to or an addition to the procedures stated in sections 105.23  
6 10 and 105.24, 148.6 through 148.9, 152.10, 152.11, 153.33,  
6 11 154A.23, 542.11, 542B.22, 543B.35, 543B.36, ~~and~~ 544B.16, and  
6 12 545.6.  
6 13 Sec. 12. Section 272C.6, subsection 6, unnumbered  
6 14 paragraph 1, Code 2009, is amended to read as follows:  
6 15 A board created pursuant to chapter 147, 154A, 155, 169,  
6 16 542, 542B, 543B, 543D, 544A, ~~or~~ 544B, or 545 may charge a fee  
6 17 not to exceed seventy-five dollars for conducting a  
6 18 disciplinary hearing pursuant to this chapter which results in  
6 19 disciplinary action taken against the licensee by the board,  
6 20 and in addition to the fee, may recover from a licensee the  
6 21 costs for the following procedures and associated personnel:  
6 22 Sec. 13. INITIAL ABSTRACTOR BOARD OF EXAMINERS ==  
6 23 APPOINTMENTS. The initial members of the abstractor board of  
6 24 examiners shall be appointed to the following terms:  
6 25 1. Two members shall be appointed for a term of three  
6 26 years.  
6 27 2. Two members shall be appointed for a term of two years.  
6 28 3. One member shall be appointed for a term of one year.  
6 29 Sec. 14. EFFECTIVE DATE. This Act takes effect July 1,  
6 30 2010.

#### 6 31 EXPLANATION

6 32 This bill is a licensing practice Act creating the  
6 33 abstractor board of examiners within the department of  
6 34 commerce. The board is authorized to issue a license upon the  
6 35 application of an individual, firm, partnership, association,  
7 1 or corporation which engages in the business of preparing  
7 2 abstracts of title to real property or who conducts real  
7 3 property title searches, and upon payment of a license fee.  
7 4 An individual who prepares abstracts of title to real property

7 5 or real property title searches is required to pass an  
7 6 examination and pay an examination fee. The board is required  
7 7 to adopt rules for the administration of the new provisions.  
7 8 The abstractor board of examiners has authority to conduct  
7 9 examinations of applicants, to establish bond and insurance  
7 10 requirements, to establish continuing education requirements,  
7 11 and to set fees for the examination and license. Access to  
7 12 county real estate records may be compelled by judicial action  
7 13 pursuant to Code section 22.10. A private party may bring an  
7 14 action for damages for violations of the new provisions.  
7 15 Violation of this new licensing practice Act may result in  
7 16 the suspension or revocation of a license, or a civil penalty  
7 17 up to \$1,000.  
7 18 The bill takes effect July 1, 2010.  
7 19 LSB 1862HC 83  
7 20 jr/rj/5